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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,769	08/10/1999	ERWIN HACKER	514413-3765	9638
20999	7590	10/06/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			PRYOR, ALTON NATHANIEL	
		ART UNIT	PAPER NUMBER	
			1616	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/371,769	HACKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alton N. Pryor	1616	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<p>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</p> <p>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</p> <p>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</p> <p>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</p> <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<b>Status</b>			
1) <input type="checkbox"/> Responsive to communication(s) filed on <u>17 June 2004</u> .			
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .      2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input type="checkbox"/> Claim(s) <u>13-28</u> is/are pending in the application.			
4a) Of the above claim(s) <u>16,17 and 19</u> is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) <u>23 and 24</u> is/are allowed.			
6) <input type="checkbox"/> Claim(s) <u>13-15,18,20-22,25-28</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).			
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.			
<b>Priority under 35 U.S.C. § 119</b>			
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
* See the attached detailed Office action for a list of the certified copies not received.			
<b>Attachment(s)</b>			
1) <input type="checkbox"/> Notice of References Cited (PTO-892)			
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)			
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.			
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.			
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)			
6) <input type="checkbox"/> Other: _____.			

**DETAILED ACTION**

I. Rejection of claims 13,15,18,20,21,25,26 under 35 USC 102(e) as being anticipated by Reugg et al (US 6180563) will be maintained for reason on record and reason as follows. Applicant argues that Reugg does not teach a synergistic combination comprising glufosinate and pyrithiobac-sodium only as disclosed by instant claims. Applicant argues that active compounds of formula (I) are required in Ruegg's composition and method. Examiner argues that Applicant employs the language comprising which allows for the inclusion of Reugg's compounds of formula (I). With respect to synergism, Examiner argues that Applicant does not provide synergistic data for a combination comprising glufosinate and pyrithiobac-sodium. Applicant refers Examiner to unexpected results cited on pages 4 and 33. Examiner encourages Applicant to write claims in scope with unexpected data.

II. Rejection of claims 27,28 under 35 USC 103(a) as being obvious over Reugg (US '563) and Ruegg (US 5965486) will be maintained for reason on record and reason as follows. See argue in I.

III. Rejection of claims 13-15,18,20-22,25,26 under 35 USC 103(a) as being obvious Ruegg (US 5965486) and Tymonko (US 5965486) will be maintained for reason on record and reason as follows. See argue in I.

IV. Claims 23 and 24 are allowable for reason on record.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Alton Pryor  
Primary Examiner  
AU 1616